

Child and Family Services Policy Manual: Legal Procedure State Subsidized (General Fund) Guardianship

State-Funded Guardianship Subsidy

The Department has the authority to provide financial assistance and Medicaid to eligible children for whom guardianship is established under Mont. Code Ann. 41-3-444. State-funded guardianship subsidy is intended for children who are NOT IV-E eligible. The prospective guardian must meet youth foster care licensing requirements. For information on Title IV-E Guardianship Assistance Program, (Title IV-E Subsidized Guardianship), see policy section [407-4](https://dphhs.mt.gov/portals/85/cfsd/documents/cfsdmanual/407-4.pdf).
<https://dphhs.mt.gov/portals/85/cfsd/documents/cfsdmanual/407-4.pdf>

Purpose

The Department of Public Health and Human Services, Child and Family Services Division is committed to permanency for all children.

Guardianship will be the preferable permanent placement option for some children, but should only be utilized when reunification and adoption have been ruled out. Guardianship is a permanency option for children for whom a permanency team has made the determination that guardianship is the most appropriate permanent placement option.

Establishment of guardianship creates a legal relationship between the child and the guardian(s) which can only be terminated by the court.

Definitions

A **child or youth (minor)** is any person under 18 years of age. Mont. Code Ann. 41-1-101.

A **legal guardian** is a person who has qualified as a caretaker of a child/youth in the custody of the Department or tribe and has been appointed guardian by the court.

A **legal guardianship** is a judicially created relationship between a child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: Protection, education, care and control of the child, custody of the child and decision making.

A **kinship guardian** is:

- a member of the child's extended family;
- a member of the child's or family's tribe;

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- the child's godparents;
- the child's stepparents; or
- a person to whom the child, child's parents and family ascribe a family relationship and with whom the child has had a significant emotional tie that existed prior to the agency's involvement with the child or family.

A **Non-kinship guardian** is:

- a person to whom the child or child's family **did not have** a significant emotional tie **that existed prior** to the agency's involvement with the child or family. (i.e., foster parent).

NOTE: A non-kinship guardian is only eligible for state subsidized guardianship regardless of child's eligibility)

Legal Requirements for Guardianship

Guardianship must meet the general legal requirements outlined in Policy Sections 302-4 and 407-2
<https://dphhs.mt.gov/portals/85/cfsd/documents/cfsdmanual/302-4.pdf>
<https://dphhs.mt.gov/portals/85/cfsd/documents/cfsdmanual/407-2.pdf>

The following eligibility requirements must also exist before the Department will consent to a guardianship **and** consider a **state (General Fund) guardianship subsidy**:

- If adoption is in the child's best interests, no appropriate adoptive family has been located despite a diligent search
- Foster care payments are being made on the child's behalf;
- The prospective guardianship family is a licensed foster/kin family and has been approved by the Department to become the legal custodian of the child; and
- The child has resided with the prospective guardian(s) for a minimum of six months;

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- the child has been consulted regarding the guardianship, if the child is 12 and older

Educational Requirement

As a condition of receiving a General Fund subsidy, the guardian(s) must have the child enrolled in school or in an authorized independent study program, or the child must be home schooled consistent with the law of the State or other jurisdiction in which the school, program, or home is located during the entire time the legal guardianship is in place. If the child does not remain enrolled in school or in an authorized independent living study program, or the child is not home schooled consistent with the law of the State or other jurisdiction the guardians will not be eligible to continue to receive the subsidy; however the guardianship will remain in place.

Selection of Placement:

Priority to Extended Family

If the child meets the definition of an **abandoned child**, the court may give priority to a member of the child's extended family, including adult siblings, grandparents, great-grandparents, aunts and uncles. Placement with the extended family member must be determined to be in the best interests of the child.

If more than one extended family member has requested to be appointed as guardian, the court may determine which extended family member to appoint based on a finding by the court that the extended family member is qualified to care for the child and which of the interested extended family members can best meet the child's needs. (refer to Policy Sections 304-2 Diligent Search, 402-4 Unlicensed Kinship and 802-4 Kinship Foster Care Licensure for selection guidelines)

<https://dphhs.mt.gov/portals/85/cfsd/documents/cfsdmanual/304-2.pdf>

<https://dphhs.mt.gov/portals/85/cfsd/documents/cfsdmanual/402-4.pdf>

<https://dphhs.mt.gov/portals/85/cfsd/documents/cfsdmanual/802-4.pdf>

Completing the Guardianship Process

General steps for completing a guardianship are outlined in Policy Section 407-2. The following are additional guidelines for guardianships in which subsidy is considered.

<https://dphhs.mt.gov/portals/85/cfsd/documents/cfsdmanual/407-2.pdf>

Permanency Team Staffing

A permanency team will determine if Guardianship is the most appropriate plan for the child and the necessary actions that must be taken prior to filing a petition for guardianship with the court.

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Participants in the staffing must include the child's Child Protection Specialist, Child Protection Specialist Supervisor, Family Resource Specialist or Family Resource Specialist Supervisor and Permanency Planning Specialist. (See Policy 407-2 for Permanency Team Staffing requirements related to Guardianships). See Policy Section 409-2 for general information on Permanency staffings.)

<https://dphhs.mt.gov/portals/85/cfsd/documents/cfsdmanual/407-2.pdf>

<https://dphhs.mt.gov/portals/85/cfsd/documents/cfsdmanual/409-2.pdf>

Guardianship Assessment Required

In accordance in ARM 37.50.1101, the prospective guardian(s) must meet the Youth Foster Home Licensing requirements. A Guardianship Assessment is conducted by the Family Resource Specialist or assigned worker. It involves a written assessment of the prospective guardian and the guardian's home environment in regards to the needs of the specific child's for which they wish to provide a permanent home.

In order to complete the written assessment, an updated home visit is required with the prospective guardian focusing on his/her understanding of the rights and responsibilities of a guardianship, the child's needs, the prospective guardian's ability to meet those needs and their willingness to make a permanent commitment. **The family may also need to complete an updated fingerprint based criminal and CPS check specifically for the guardianship.** (See Policy Section 802-6 for Guardianship Assessment guidelines and Policy Section 802-3 Criminal Record and Protective Service Checks)

<https://dphhs.mt.gov/portals/85/cfsd/documents/cfsdmanual/802-6.pdf>

<https://dphhs.mt.gov/portals/85/cfsd/documents/cfsdmanual/802-3.pdf>

Guardianship Home Reassessment

If the guardianship for children for whom a guardianship assessment was completed is not established within one year of the approval of the guardianship assessment, a re- assessment must be completed. An annual name-based check will also be completed in accordance with Policy Section 802-3,

A guardianship assessment or re-assessment is only valid for the specific child or children identified on the application. If a person wishes to become a guardian for additional children, a new application and assessment must be completed.

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*CAPS Entry
For Guardianship
Assessment*

The completed guardianship home assessment and recommendation must be entered in CAPS (FALD screen) as a licensed “approved” facility using the appropriate code:

**GKS Guardian Kinship or
GNK Guardian Non-Kinship**

If the assessment is completed by a tribe and entered into CAPS, the appropriate codes are:

**TGK Tribal Guardian Kinship or
TGN Tribal Guardian Non-Kinship**

NOTE: The FSPL codes for guardianship do not automatically default to the FSPL screen, thus the Fiscal officer in your region should be contacted to enter in the following service codes for this provider.

**PGUAR (primary child)
PGUAS (sibling)(if applicable)**

***CFS-132 Title IV-E
Guardianship
Program Eligibility
Determination***

The CFS-132 needs to be completed in **all** guardianship for which subsidy may be requested. This form helps justify the eligibility for subsidy and document that the criteria has been met. The field determines the eligibility and will check off the eligibility (page 2). Upon completion, scan document into DOCGEN.

<http://ours.hhs.mt.gov/forms/CFSforms/PlacementForms/cfs-132.doc>

*Determining the
Eligibility for Subsidy*

The Department may provide state-funded (General fund) guardianship subsidy for otherwise eligible children who are **NOT IV-E eligible** (foster care maintenance payments) and who have a guardianship established with any person approved by the Department

*Review of
IVEL screen*

The child’s eligibility for the State funded guardianship or Title IV-E guardianship subsidy may be determined by reviewing the **IVEL** screen. The following information may be entered:

APPROVED: indicates that the child is receiving Title IV-E foster care maintenance payments

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DENIED: indicates that the child is not eligible to receive Title IV-E foster care maintenance payments and is not eligible for Title IV-E Guardianship assistance.

SUSPENDED: indicates that the child has the potential of eligibility for Title IV-E but that information or documentation has not been received by the IV-E Unit to determine or redetermine eligibility. (In these cases, please contact the IV-E Unit in Central Office to determine deficiency).

What if the Child is Eligible for Title IV-E Foster Care Maintenance but the Provider does not meet the Definition of KIN

In rare circumstances a child may be receiving Title IV-E foster care maintenance but the provider may not meet the definition of **KIN** making them ineligible for Title IV-E Guardianship Assistance.

In this case, the child's Child Protection Specialist or assigned worker must clearly document why adoption is not being considered and all alternative options have been exhausted. If these criteria have been met and guardianship with this prospective guardian is still considered the most appropriate plan, the Child Protection Specialist or assigned worker needs to request approval for a General Fund subsidy. The written request and justification shall be sent to the Regional Administrator and Division Administrator. Once approval has been received, the documentation of this approval shall be scanned into DOCGEN with the other Guardianship documents

**Subsidy
Negotiation**

*Guardian Subsidy
Agreement CFS-131*

Upon completion of the Permanency staffing, CFS-132 Title IV-E Guardianship Assistance Program Determination, Case plan (CFS-157a), and Approved Guardianship Assessment (CFS-133), the Permanency Planning Specialist or designee will contact the prospective guardian to review and negotiate the terms of the guardianship subsidy. The terms negotiated must include a monthly cash amount to facilitate the Medicaid coverage. **All relevant parties must sign the CFS-131 Subsidized Guardianship Agreement prior to the finalization of the Guardianship.**

<http://ours.hhs.mt.gov/forms/CFSforms/PlacementForms/CFS-131SubsidizedGuardianshipAgreement.doc>

<http://ours.hhs.mt.gov/forms/CFSforms/PlacementForms/cfs-157aguardianshipcaseplanningattachment.doc>

<http://ours.hhs.mt.gov/forms/CFSforms/PlacementForms/cfs-132.doc>

<http://ours.hhs.mt.gov/forms/CFSforms/PlacementForms/CFS-133%20Agreement%20on%20Guardianship%20Placement.doc>

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<i>Cash Assistance</i>	Subsidy amount shall be negotiated for <u>an amount greater than \$0</u> and not to exceed \$10 less than the monthly foster care maintenance payment that the child is receiving at the time of his/her foster care placement.
<i>Non-Recurring Guardianship Expenses</i>	NOTE: Children receiving state funded subsidies <u>are not eligible</u> for non-recurring guardianship expenses. This is specific to Title IV-E Guardianship subsidy eligibility.
SSI and Subsidy	<p>If the child is receiving SSI benefits, this factors into the negotiation process. The child remains entitled to SSI and the family is required to apply as payee for the child.</p> <p>SSA does not factor the guardian(s) income into the SSI eligibility. The child's income is factored in. SSI will be decreased by at least 1/3 of its total as an (in kind) room and board. The prospective guardians should contact SSA directly to determine a more accurate amount.</p> <p>When negotiating the subsidy, the SSI amount will need to be factored in. The Division may negotiate a subsidy amount to make up the difference of what would be considered a subsidy.</p>
Subsidy and Medicaid	State Subsidized Guardianships include Medicaid. Medicaid is now opened via Central Office. A guardianship subsidy needs to be assigned a <u>cash</u> amount in order for the child to be eligible for Medicaid through the guardianship program.
<i>Availability of Other Services</i>	<p>The Department as part of the subsidy negotiation may inform the guardians about available post guardianship resources and information. The CFS-131 Subsidized Guardianship Agreement has incorporated this provision under General Provisions as part of the Subsidy Agreement.</p> <p>http://ours.hhs.mt.gov/forms/CFSforms/PlacementForms/CFS-131SubsidizedGuardianshipAgreement.doc</p>
<i>Subsidy Renegotiation</i>	The subsidy amount may be adjusted periodically, in consultation with the guardian, based on the circumstances of the guardian and needs of the child. A new CFS-131 Subsidized Guardianship Agreement will need to be completed and signed by the guardian(s) and the Department designee
<i>Subsidy Denial</i>	In cases where a prospective guardian whose claim and/or amount requested in the subsidy agreement is denied, the

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prospective guardians are given an opportunity for a fair hearing.

DOCGEN Entry

Throughout the process and upon finalization of the Guardianship, the following documents need to be scanned into DOCGEN:

- Guardianship Decree
- Completed CFS-132 Title IV-E Guardianship Assistance Program Eligibility Determination
- Completed and signed CFS-131 Subsidized Guardianship Agreement
- Birth Certificate if this has not already been scanned in

The Title IV-E Unit should be notified that these documents have been scanned into DOCGEN. They will enter the correct funding source for the subsidy on the CELL screen.

Case Transfer to PAS

Upon the receipt of the Guardianship Decree the case in CAPS should be transferred to the Regional Program Assessment Specialist (PAS). The Child Protection Specialist should make sure that the PAS has all the necessary information for CAPS entry. If necessary, the PAS can share the case with CPS to allow the worker to complete any case management.

Steps to CAPS Entry

The following screens shall be entered and completed upon finalization by the PAS.

- **FALL** – check this screen to make sure that an approved guardianship license has been entered
- **FSPL**- review this screen to make sure PGUAR and/or PGUAS has been added
- **CRTL** - a disposition code of **GSP** (guardianship-youth) should be entered.
- **RELL** - Guardians should now be added and entered in on this screen as **LGD** (legal guardians)

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- **CPHL** -close foster care using exit reason of **POG**
-type **GARD** and **F11** on **CPHL**.
-complete **GARD** screen
- **SERP**- close all open foster care services including the removal service. The following services should be added
 - PGUAR** for primary child
 - **PGUAS** for siblings placed in same home (if applicable)

NOTE: in subsidy cases the IARD screen needs to remain open (no closure review) in order for the system to trigger the subsidy payment.

Case Record

NOTE: The child's case file remains with field staff. Subsidy payments (PAYA) are approved by the PAS.

References

Mont. Code Ann. § 41-3-444
Admin.Rule Mont. 37.50.1101
Admin Rule Mont. 37.50.1102
Fostering Connections to Success and Increasing Adoptions Act of 2008

New 10/12